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2
3 CITY OF SUNRISE FIREFIGHTERS'
4 PENSION FUND, on behalf of themselves
5 and all others similarly situated,

6 Plaintiff,

7 v.

8 ORACLE CORPORATION, et al.,

9 Defendants.

10 Case No. 18-cv-04844-BLF

11 **ORDER GRANTING UNION ASSET
12 MANAGEMENT HOLDING AG'S
MOTION FOR APPOINTMENT AS
LEAD PLAINTIFF AND APPROVAL
OF ITS SELECTION OF LEAD
COUNSEL**

13 [Re: ECF 17]

14 Before the Court is Plaintiff Union Asset Management Holding AG's ("Union") Motion
15 for Appointment as Lead Plaintiff and Approval of its Selection of Lead Counsel ("Motion").
16 Motion, ECF 17. No other class member filed a motion for appointment as Lead Plaintiff. *See*
17 Notice of Non-Opposition at 1, ECF 21. The deadline to oppose Union's motion having passed,
18 Union's motion is unopposed. *Id.* Pursuant to Civil Local Rule 7-1(b), the Court finds this matter
19 suitable for submission without oral argument and hereby VACATES the hearing scheduled for
20 April 11, 2019. For the reasons stated herein, the Court GRANTS Union's motion.

21 **I. BACKGROUND**

22 On August 10, 2018, Plaintiff City of Sunrise Firefighters' Pension Fund ("City of
23 Sunrise") filed this putative securities class action lawsuit against Defendants Oracle Corporation
24 ("Oracle"), Safra A. Catz, Mark Hurd, Lawrence J. Ellison, Thomas Kurian, Ken Bond, and Steve
25 Miranda. Compl., ECF 1. City of Sunrise brings this lawsuit on behalf of purchases of Oracle
26 stock between May 10, 2017 and March 19, 2018 ("the Class Period"), alleging that Defendants
27 misrepresented Oracle's revenue growth within its cloud segment and the drivers of that growth.
28 *See* Compl. ¶¶ 2–6. According to the complaint, Oracle investors (including Union, *see* Motion at

1) incurred significant losses when it was revealed that Oracle’s improper sales tactics had concealed the lack of real demand for Oracle’s cloud services and that revenue growth in the cloud segment had stagnated. *Id.* ¶¶ 5–6. Specifically, the complaint alleges that when “[t]he truth was revealed” regarding Oracle’s actual cloud revenue growth, these “revelations caused Oracle shares to decline by \$4.90 per share, or nearly 9.5%—[Oracle’s] largest single-day stock drop in over five years.” *Id.* ¶ 6.

As a result, City of Sunrise filed the instant lawsuit for violations of the Securities Exchange Act of 1934 on behalf of all persons who purchased Oracle Stock during the Class Period. *Id.* ¶ 2. On October 9, 2018, Union filed this motion seeking appointment as lead plaintiff and approval of Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) as lead counsel for the class. No other plaintiffs have sought to be named lead plaintiff, and no other law firms have sought to be named lead counsel.

II. LEGAL STANDARD

A. Lead Plaintiff

The Private Securities Litigation Reform Act of 1995 (“PSLRA”) governs the procedure for selection of lead plaintiff in all private class actions under the Securities Exchange Act of 1934. 15 U.S.C. § 78u-4(a)(3). Pursuant to the PSLRA, the court shall appoint as lead plaintiff “the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members,” also referred to as the “most adequate plaintiff.” *Id.* at § 78u-4(a)(3)(B)(i).

The PSLRA “provides a simple three-step process for identifying the lead plaintiff.” *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). First, the pendency of the action, the claims made, and the purported class period must be publicized in a “widely circulated national business-oriented publication or wire service.” *Id.*; *see also* 15 U.S.C. § 78u-4(a)(3)(A)(i)(I). This notice must be published within 20 days of the filing of the complaint. *Id.* It must also alert members of the purported class that they have 60 days to move for appointment as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i)(II).

Second, the court must identify the presumptive lead plaintiff. To do so, the court “must

1 compare the financial stakes of the various plaintiffs and determine which one has the most to gain
2 from the lawsuit.” *Cavanaugh*, 306 F.3d at 730. The court must then determine whether that
3 individual, “based on the information he has provided in his pleadings and declarations,” satisfies
4 the requirements of Rule 23(a), “in particular those of ‘typicality’ and ‘adequacy.’” *Id.* If the
5 plaintiff with the largest financial interest satisfies these requirements, he becomes the
6 “presumptively most adequate plaintiff.” *Id.*; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

7 Finally, the other plaintiffs must have “an opportunity to rebut the presumptive lead
8 plaintiff’s showing that [he] satisfies Rule 23’s typicality and adequacy requirements.”
9 *Cavanaugh*, 306 F.3d at 730. Unless a member of the purported plaintiff class provides proof that
10 the presumptive plaintiff “(aa) will not fairly and adequately protect the interests of the class; or
11 (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing
12 the class,” the court must appoint the presumptively most adequate plaintiff as lead plaintiff. 15
13 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *see also* *Cavanaugh*, 306 F.3d at 732.

14 **B. Lead Counsel**

15 Under the PLSRA, the lead plaintiff has the right, subject to court approval, to “select and
16 retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). “[T]he district court should
17 not reject a lead plaintiff’s proposed counsel merely because it would have chosen differently.”
18 *Cohen v. U.S. Dist. Court*, 586 F.3d 703, 711 (9th Cir. 2009) (citation omitted). “[I]f the lead
19 plaintiff has made a reasonable choice of counsel, the district court should generally defer to that
20 choice.” *Id.* at 712 (citations omitted).

21 **III. ANALYSIS**

22 **A. Procedural Requirements**

23 Pursuant to the PSLRA, Bernstein Litowitz (on behalf of City of Sunrise) published notice
24 of the pending action on August 10, 2018, the same date that the complaint was filed. *See* 15
25 U.S.C. § 78u-4(a)(3)(A)(i); Stickney Decl. Ex. D, ECF 17-6. The notice announced the pendency
26 of this action, listed the claims, specified the class period, and advised putative class members that
27 they had 60 days from the date of the notice to file a motion to seek appointment as lead plaintiff
28 in the lawsuit. *Id.* Thus, the notice complied with the PSLRA’s requirements. *See* 15 U.S.C. §

1 78u-4(a)(3)(A).

2 As noted above, Union then filed this motion on October 9, 2018, the last day within the
3 60-day deadline. Union has therefore met the statutory notice requirements.

4 **B. Financial Interest**

5 The Court must next determine whether Union qualifies as the most adequate plaintiff. To
6 make this determination, the Court must first consider Union's financial interest in the relief
7 sought. *See Cavanaugh*, 306 F.3d at 730. Union has submitted charts setting forth calculations of
8 Union's alleged losses, totaling approximately \$15.2 million when calculated on a FIFO basis and
9 approximately \$7.8 million when calculated on a LIFO basis. *See* Stickney Decl. Ex. C, ECF 17-
10 5; Motion at 1.

11 Because Union was the only movant for appointment as lead counsel and the motion is
12 unopposed, Union is necessarily the prospective lead plaintiff with the greatest financial interest in
13 the litigation. *See* Notice of Non-Opposition at 1, ECF 21; *see also City of Dearborn Heights Act*
14 *345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 2013 WL 2368059, at *3 (N.D. Cal. May 29,
15 2013) (quoting *Bassin v. Decode Genetics, Inc.*, 230 F.R.D. 313, 316 (S.D.N.Y. 2005)) ("Without
16 access to financial information from other parties, the Court is constrained to conclude that the
17 [proposed plaintiff's] alleged loss best qualifies it to serve as lead plaintiff.").

18 **C. Rule 23 Requirements**

19 Having determined that Union is the prospective lead plaintiff with the greatest financial
20 stake in this litigation, the Court must next consider whether Union satisfies the typicality and
21 adequacy requirements of Rule 23(a).¹ "When the court makes [this] initial determination, it must
22 rely on the presumptive lead plaintiff's complaint and sworn certification; there is no adversary
23 process to test the substance of those claims." *Cavanaugh*, 306 F.3d at 730. As such, Union need
24 only make a *prima facie* showing that it satisfies the Rule 23 requirements of typicality and
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¹ Federal Rule of Civil Procedure 23(a) sets forth four requirements for class certification: (1)
27 numerosity, (2) commonality, (3) typicality, and (4) adequacy. Fed. R. Civ. P. 23(a). At the
28 appointment of lead plaintiff stage, courts need only consider typicality and adequacy, as the
failure to satisfy numerosity or commonality would preclude certifying a class action at all.
Cavanaugh, 306 F.3d at 730 n.5.

1 adequacy. *See id.* at 731.

2 In determining whether typicality is satisfied, a Court inquires “whether other members
3 have the same or similar injury, whether the action is based on conduct which is not unique to the
4 named plaintiffs, and whether other class members have been injured by the same course of
5 conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). In this case, like all
6 other members of the purported class, Union purchased Oracle stocks during the Class Period,
7 when Oracle’s stock prices were allegedly artificially inflated by Defendants’ misrepresentations
8 and/or omissions, and Oracle allegedly suffered damages when those misrepresentations and/or
9 omissions came to light. *See generally* Compl.; *see also* Motion at 1. Union’s claims thus appear
10 to be typical, if not identical, to the claims of other members of the putative class.

11 The test for adequacy asks whether the lead plaintiff and its counsel “have any conflicts of
12 interest with other class members” and whether the lead plaintiff and his counsel will “prosecute
13 the action vigorously on behalf of the class.” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir.
14 2003). Here, there is no indication of conflicts between Union and other class members and
15 Union’s diligence in seeking appointment as lead plaintiff suggests that Union and its counsel will
16 prosecute this action vigorously. Thus, Union has made a *prima facie* showing of typicality and
17 adequacy, as required at this stage, and the Court finds that Union qualifies as the presumptively
18 most adequate plaintiff under the PSLRA.

19 **D. Opportunity to Rebut**

20 Union’s Motion is unopposed and no member of the purported plaintiff class has provided
21 proof that Union “will not fairly and adequately protect the interests of the class” or that Union “is
22 subject to unique defenses that render [it] incapable of adequately representing the class.” 15
23 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Accordingly, the Court APPOINTS Union to serve as lead
24 plaintiff.

25 **E. Lead Counsel**

26 No parties have objected to Union’s selection of Bernstein Litowitz as counsel. The Court
27 has reviewed the firm’s resume, Stickney Decl. Ex. E, ECF 17-7, and is satisfied that Union has
28 made a reasonable choice of counsel. Accordingly, the Court APPROVES Union’s selection of

1 Bernstein Litowitz as lead counsel.

2 **IV. CONCLUSION**

3 For the foregoing reasons, Union's Motion at ECF 17 is **GRANTED**.

5 **IT IS SO ORDERED.**

6 Dated: December 21, 2018



7
8 BETH LABSON FREEMAN
United States District Judge